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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/675,371
Filing Date: September 30, 2003
Appellant(s): BECKSTROM ET AL.

James Scheer

For Appellant

EXAMINER'S ANSWER

This is in response to the Appeal Brief filed June 23, 2010, appealing from the Office action mailed October 23, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,047,060	Fedorov	04-2000
6,724,887	Eilbacher	01-2000
6,363,145	Shaffer	03-2002
6,138,139	Beck	10-2000
6,021,428	Miloslavsky	02-2000
6,542,602	Elazar	04-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-2, 4-9, 11-12, and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fedorov (US Patent No. 6,047,060) filed on February 20, 1998, in view of Eilbacher (US Patent No. 6,724,887) filed January 24, 2000, further in view of Shaffer (US Patent No. 6,363,145) filed on August 17, 1998.**

Regarding Claims 1, 11, and 20, Fedorov discloses a method for improving transactions in a communication system, comprising:

monitoring an ongoing data session (column 5, lines 26-29, Fedorov) between first and second parties (column 7, lines 56-59, Fedorov)¹ in an established transaction in the communication system (column 10, lines 48-55, Fedorov); and

conferencing a third party into the transaction as an additional participant in the transaction in response to the monitoring of the data session between the first and second parties (column 2, lines 34-39 and column 8, lines 27-35, Fedorov). However, Fedorov is not as detailed with the data session being a text data session. On the other hand, Eilbacher discloses a text data session (column 6, lines 15-31, Eilbacher)². Fedorov and Eilbacher are analogous art because they are from the same field of endeavor of customer contact centers. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Eilbacher's teachings into the Fedorov system. A skilled artisan would have been motivated to combine as a way of not limited the accessibility and functionality of the system. Thereby, broadening the possible usable communication mechanisms.

However, since Fedorov is an automatic call distributor (ACD) environment, it would not be unheard of for other features within the system, such as monitoring and conferencing, to be able to be performed automatically.

¹ Examiner Notes: The agent and the customer represent the first and second parties.

As well as, by definition, the term automatic means "*acting or done as if by machine; mechanical*" (see The American Heritage College Dictionary, 4th Edition); thereby as a broad interpretation detailing the fact that within this particular art, if some action is performed on a computer (i.e. machine) then it is implied to be done automatically. Nevertheless, Fedorov is not as detailed as the examiner would like, with respect to the steps being performed automatically. On the other hand, Shaffer discloses the step of automation (column 4, lines 17-27 and column 5, lines 36-65, Shaffer)³. Fedorov and Shaffer are analogous art because they are from the same field of endeavor of automatic call distributors. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Shaffer's teachings into the Fedorov system. A skilled artisan would have been motivated to combine as suggested by Shaffer at column 2, lines 18-23, in order to provide automated ACD call monitoring. As a result, enabling a supervisor to utilize information generated by the monitoring during the pendency of the call and providing a more complete description of agent performance. As well as allowing a superior official to join in, if needed.

Regarding Claim 2, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the method wherein the third party is at least one of a virtual party and an automated input (column 5, lines 37-50, Shaffer).

² Examiner Notes: The e-mail communication is a representation of a text data session.

³ Examiner Notes: Shaffer explicitly teaches the step of automatically monitoring and it is understood within the art that if the third party has the capability to automatically monitor the session then the third party also has the capability to automatically conference (i.e. engage).

Regarding Claim 4, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the method wherein the third party is engaged into a background of the ongoing data session of at least one of the first and second parties in response to the automatic monitoring (column 7, lines 50-54, Fedorov)⁴. However, Fedorov is not as detailed with the engaging being performed automatically. On the other hand, Shaffer discloses the step of automation (column 4, lines 17-27 and column 5, lines 36-65, Shaffer). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Shaffer's teachings into the Fedorov system. A skilled artisan would have been motivated to combine as suggested by Shaffer at column 2, lines 18-23, in order to provide automated ACD call monitoring. As a result, enabling a supervisor to utilize information generated by the monitoring during the pendency of the call and providing a more complete description of agent performance. As well as allowing a superior official to join in, if needed.

Regarding Claim 5, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the method wherein the third party is engaged into a foreground of the ongoing data session (column 8, line 29, Fedorov). However, Fedorov is not as detailed with the engaging being performed automatically and to reduce stress levels of at least one of the first and second

parties in response to the automatic monitoring. On the other hand, Shaffer discloses the step of automation (column 4, lines 17-27 and column 5, lines 36-65, Shaffer) and to reduce stress levels of at least one of the first and second parties in response to the automatic monitoring (columns 7-8, lines 61-67 and 1-5, respectively, Shaffer). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Shaffer's teachings into the Fedorov system. A skilled artisan would have been motivated to combine as suggested by Shaffer at column 2, lines 18-23, in order to provide automated ACD call monitoring. As a result, enabling a supervisor to utilize information generated by the monitoring during the pendency of the call and providing a more complete description of agent performance. As well as allowing a superior official to join in, if needed.

Regarding Claim 6, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the method wherein the third party communicates only with one of the first and second parties (column 8, lines 27-35, Fedorov)⁵.

Regarding Claim 7, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the method wherein the third party

⁴ Examiner Notes: Since the supervisor is talking to the agent and not both, the supervisor is participating in the background of the call.

⁵ Examiner Notes: "To communicate with the agent transparent to the caller" corresponds to only communicating with one of the parties (i.e. the agent).

communicates with both of the first and second parties (column 8, lines 27-35, Fedorov)⁶.

Regarding Claim 8, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the method wherein the monitoring of the data session between the first and second parties is conducted in real-time (column 7, lines 50-54, Fedorov) and wherein measured changes in stress levels of one of the parties based upon a deviation from a preceding time period cause engagement of the third party (column 4, lines 44-63 and columns 7-8, lines 66-67 and 1-5, respectively, Shaffer).

Regarding Claim 9, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the method wherein the monitoring of the data session is conducted by at least one of; analyzing a respective voice signal of at least one of the first and second parties (column 4, lines 34-39 and column 6, lines 48-52, Shaffer), converting a respective voice signal of at least one of the first and second parties to text and analyzing the text, and analyzing a physical stress level of at least one of the first and second parties.

Regarding Claim 12, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the apparatus wherein the data session is

⁶ Examiner Notes: "To participate in the calls" corresponds to communicate with both parties.

internet based (column 10, lines 48-53, Federov) and monitoring includes monitoring video input of the parties to the transaction (column 6, lines 2-4 and 42-57, Eilbacher) to assist in determining stress levels of the parties (column 11, lines 11-44, Eilbacher).

Regarding Claim 14, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the apparatus wherein the third party is engaged into a background of the ongoing data session of at least one of the first and second parties in response to the automatic monitoring (column 7, lines 50-54, Fedorov)⁷. However, Fedorov is not as detailed with the engaging being performed automatically. On the other hand, Shaffer discloses the step of automation (column 4, lines 17-27 and column 5, lines 36-65, Shaffer). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Shaffer's teachings into the Fedorov system. A skilled artisan would have been motivated to combine as suggested by Shaffer at column 2, lines 18-23, in order to provide automated ACD call monitoring. As a result, enabling a supervisor to utilize information generated by the monitoring during the pendency of the call and providing a more complete description of agent performance. As well as allowing a superior official to join in, if needed.

⁷ Examiner Notes: Since the supervisor is talking to the agent and not both, the supervisor is participating in the background of the call.

Regarding Claim 15, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the apparatus wherein the third party is engaged into a foreground of the ongoing data session (column 8, line 29, Fedorov). However, Fedorov is not as detailed with the engaging being performed automatically and to reduce stress levels of at least one of the first and second parties in response to the automatic monitoring. On the other hand, Shaffer discloses the step of automation (column 4, lines 17-27 and column 5, lines 36-65, Shaffer) and to reduce stress levels of at least one of the first and second parties in response to the automatic monitoring (columns 7-8, lines 61-67 and 1-5, respectively, Shaffer). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Shaffer's teachings into the Fedorov system. A skilled artisan would have been motivated to combine as suggested by Shaffer at column 2, lines 18-23, in order to provide automated ACD call monitoring. As a result, enabling a supervisor to utilize information generated by the monitoring during the pendency of the call and providing a more complete description of agent performance. As well as allowing a superior official to join in, if needed.

Regarding Claim 16, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the apparatus wherein the third party

communicates only with one of the first and second parties (column 8, lines 27-35, Fedorov)⁸.

Regarding Claim 17, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the apparatus wherein the third party communicates with both of the first and second parties (column 8, lines 27-35, Fedorov)⁹.

Regarding Claim 18, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the apparatus wherein the monitoring of the data session between the first and second parties is conducted in real-time (column 7, lines 50-54, Fedorov).

Regarding Claim 19, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose the apparatus wherein the monitoring of the data session is conducted by at least one of; analyzing a respective voice signal of at least one of the first and second parties (column 4, lines 34-39 and column 6, lines 48-52, Shaffer), converting a respective voice signal of at least one of the first and second parties to text and analyzing the text, and analyzing a physical stress level of at least one of the first and second parties.

⁸ Examiner Notes: "To communicate with the agent transparent to the caller" corresponds to only communicating with one of the parties (i.e. the agent).

⁹ Examiner Notes: "To participate in the calls" corresponds to communicate with both parties.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fedorov (US Patent No. 6,047,060) filed on February 20, 1998, in view of Eilbacher (US Patent No. 6,724,887) filed January 24, 2000, further in view of Shaffer (US Patent No. 6,363,145) filed on August 17, 1998, and further in view of Beck (US Patent No. 6,138,139) filed October 29, 1998.

Regarding Claim 3, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose all the claimed subject matter as stated above. However, Fedorov, Eilbacher, and Shaffer are not as detailed with the third party is automatically engaged in response to the automatic monitoring to review at least one of text messages and emails before they are sent. On the other hand, Beck discloses the third party is automatically engaged in response to the automatic monitoring to review at least one of text messages and emails before they are sent (column 41, lines 35-39, Beck). Fedorov, Eilbacher, Shaffer, and Beck are analogous art because they are from the same field of endeavor of a communication center. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Beck's teachings into the Fedorov and Shaffer system. A skilled artisan would have been motivated to combine in order to provide a full multimedia threading of interactions from diverse paths to be seamlessly integrated. Thus, enriching the dialog by providing added meaning and overall efficiency.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fedorov (US Patent No. 6,047,060) filed on February 20, 1998, in view of Eilbacher (US Patent No. 6,724,887) filed January 24, 2000, further in view of Shaffer (US Patent No. 6,363,145) filed on August 17, 1998, and further in view of Miloslavsky (US Patent No. 6,021,428) filed January 22, 1998.

Regarding Claim 10, the combination of Fedorov in view of Eilbacher, further in view of Shaffer, disclose wherein detection of problematic phrases within the content engages the third party (column 5, lines 29-36, Shaffer). While Shaffer does disclose detecting problematic phrases of content, however, the combination of Fedorov in view of Shaffer, are not as detailed with respect to the problematic phrases being an automatic inspection of content of data messages, text messages, and emails. On the other hand, Miloslavsky discloses automatic inspection of content of data messages, text messages, and emails (column 36, lines 9-36, Miloslavsky). Fedorov, Eilbacher, Shaffer, and Miloslavsky are analogous art because they are from the same field of endeavor of a telephone call-in-center. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Miloslavsky's teachings into the Fedorov, Eilbacher, and Shaffer system. A skilled artisan would have been motivated to combine as suggested by Miloslavsky at columns 1-2, lines 58-67 and 1-2, respectively, in order to introduce the Internet together with advances in computer hardware and software to lead to a new multi-media telephone system, known as Internet protocol

network telephony (IPNT). As a result, the use of the IPNT allows for the improved handling of more calls faster and the improvement of other services in every way.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fedorov (US Patent No. 6,047,060) filed on February 20, 1998, in view of Eilbacher (US Patent No. 6,724,887) filed January 24, 2000, further in view of Shaffer (US Patent No. 6,363,145) filed on August 17, 1998, and further in view of Elazar (US Patent No. 6,542,602) filed February 14, 2000.

Regarding Claim 13, the combination of Fedorov in view of Eilbacher, and further in view of Shaffer, disclose the apparatus wherein one of the parties in the transaction is a customer (column 7, lines 56-59, Fedorov). While Eilbacher does in fact disclose the use of keywords by a customer (column 11, lines 26-50, Eilbacher). However, the combination of Fedorov in view of Eilbacher, and further in view of Shaffer, are not as detailed with detecting a keyword use by the customer indicating that the customer desires to deal with a supervisor. On the other hand, Elazar discloses detecting a keyword use by the customer indicating that the customer desires to deal with a supervisor (columns 10-11, lines 66-67 and 1-6; respectively, Elazar). Fedorov, Shaffer, Eilbacher, and Elazar are analogous art because they are from the same field of a monitoring system. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Elazar's teachings into the Fedorov, Shaffer, and Eilbacher system. A skilled artisan would have been motivated to combine in order to

provide a more customer-based system, which recognizes issues upfront. Therefore, the combination of the references disclose automatically engaging engages the supervisor in response thereto column 4, lines 17-27 and column 5, lines 36-65, Shaffer)¹⁰.

(10) Response to Argument

a. Claims 1-20 are distinguishable over the cited references because none of the references disclose automatically conferencing, joining, or engaging a third party into the ongoing transaction in response to the automatic monitoring

In particular, appellant argues Federov does not disclose automatically conferencing or doing so in response to automatic monitoring; as well as, the monitoring in Federov requires the third party supervisor to do the monitoring which is entirely different from the claimed automatic monitoring which leaves the supervisor free to do other tasks until conferenced, joined, or engaged in response to the automatic monitoring.

Examiner respectfully disagrees. To begin, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800

¹⁰ Examiner Notes: Shaffer explicitly teaches the step of automatically monitoring and it is understood

F.2d 1091, 231 USPQ 375 (Fed.Cir.1986). The examiner asserts that the rejection set forth is under 35 USC 103(a) based on a combination of references. Specifically, Federov was not relied upon for teaching the limitation of "monitoring" and "conferencing of a third party" being performed automatically. While the examiner has explained within the rejection, Federov's invention is an automatic call distributor system, wherein it would not be unheard of for other features within the system, such as the monitoring and conferencing, to be able to be performed automatically. The examiner also notes, by definition, the term 'automatic' means "*acting or done as if by machine; mechanical*" (see The American Heritage College Dictionary, 4th Edition); thereby it is well understood within the art that an action being performed on a computer (i.e. machine) is implied to be done automatically. The examiner would also like to point out the fact that the appellant's own specification does not explicitly recite the steps of "monitoring" and "conferencing, engaging, or joining" as being performed automatically. Instead, appellant's specification merely discusses an automatic call distribution (ACD) system (i.e. call center/telemarketing), which is able to perform monitoring of sessions and conferencing in of a third party. There in nowhere that details the term automatically as being more than it's intended definitional meaning. Appellant is also reminded of the Phillips case wherein:

During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." >The Federal Circuit's en banc decision in Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard: The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." In re Am. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364], 70 USPQ2d

within the art that if the third party has the capability to automatically monitor the session then the third party also has the capability to automatically conference (i.e. engage).

1827] (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).

Phillips v. AWH Corp., 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (words of a claim "are generally given their ordinary and customary meaning" as understood by a person of ordinary skill in the art in question at the time of the invention).

In response to applicant's argument that the reference fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., automatic monitoring which leaves the supervisor free to do other tasks until conferenced, joined, or engaged) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed.Cir.1993). In particular, the claim language does not limit require the monitoring to allow the supervisor to be free to perform other tasks. *Federov* teaches of a call center having call monitoring capabilities, wherein interactive monitoring (both active and passive) can be practiced (col.5, lines 26-29); a supervisor operating a supervisor's PC may begin active monitoring via audio sharing or could be tagged and stored in a database for later reference with passive monitoring (col.7, lines 56-67); and capabilities provided make if possible for a supervisor to passively monitor calls at agent stations, and to participate in the calls (col.8, lines 26-39)¹¹. Also, for argument sake, the supervisor may be in charge of monitoring the transactions of 15 agents (col.8, lines 40-53); thus teaching on the appellant's argument that the supervisor is free to do other tasks such as monitor other agents until his/her assistance is required. Therefore, while it is believed that it would have been extremely obvious to one of ordinary skill in the art

at the time of the invention to permit Federov to be relied upon for the disclosure of the monitoring and conferencing steps to be performed automatically (especially since Federov is an ACD system just like the appellant's system); Federov was not relied upon for the explicit teaching. And Federov's monitoring as well as conferencing is believed to teach upon the claimed language as stated.

Appellant argues, Shaffer monitors only voice not the claimed text/data messages and then merely notifies the supervisor but does not automatically engage the supervisor into the transaction as a participant.

Examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed.Cir.1986). The examiner asserts that the rejection set forth is under 35 USC 103(a) based on a combination of references. More specifically, Shaffer was not relied upon for teaching the monitoring of text data sessions. Eilbacher was incorporated in order to show that the data sessions could be text based (see col.6, lines 15-31); wherein the contact center is able to process electronic data such as voice, video, and e-mail messaging. Also, Shaffer was brought in as a reference to explicitly teach the use of automation within a call center environment (see above for more details). Thus, appellant's argument that Shaffer merely notifies the supervisor but not

¹¹ Examiner Notes: The supervisor participating in the calls corresponds to the conferencing in of a third party. Further details can be found at col.2, lines 37-39, Federov.

automatically engage, as well as the supervisor not being a participant is deemed invalid. However, for argument sake, Shaffer teaches of an automatic call distribution system that is capable of automatically monitoring calls for patterns associated with poor agent performance, which enables a supervisor (i.e. third party) to efficiently monitor a large number of agents (col.4, lines 22-27); and during the monitoring session, the agent voice data and customer voice data are transmitted to the supervisor's terminal and the supervisor is able to provide suggestions for improvement to the agent through written messages or verbal comments (i.e. participant) (cols.7-8, lines 62-67 and 1-5, respectively). Thus, Shaffer clearly performs automatic monitoring as well as conferencing in of a supervisor, which the examiner believes that it is understood within the art that if the supervisor has the capability to automatically monitor the session then the supervisor also has the capability to automatically conference (i.e. engage).

b. Claim 10 is further distinguishable over the cited references because none of the references discloses automatic inspection of content of the data/text messages.

In particular, appellant argues there is no mention of the claimed automatic inspection of the contents of the e-mail to detect problem phrases in Miloslavsky, only a description of routing the e-mails. Also, the appellant argues that the combination of the references with Miloslavsky is improper.

Examiner respectfully disagrees. Miloslavsky does teach the routing of e-mails, but he also teaches routing the e-mails to the most qualified support person, wherein a support person may be an expert in one product, therefore all e-mails related to that product will be routed to that person automatically (col.36, lines 9-36). Thus, in order for the system to know what content is in the e-mails in order to automatically route them, it would be obvious to one of ordinary skill in the art that the system would have to perform an inspection of the content. Also, in response to the combination of references being improper because it would simply provide a call center which could receive both voice and e-mail transactions, but that would merely result in noise with no meaning is completely false. Miloslavsky's telephony call-in-center is a call center that supports both voice transactions as well as text-based transactions (col.2, lines 9-37), thus showing the possibility of utilizing both. Thus, the incorporation of Miloslavsky into the other references call centers would result in the adaptation of a more diverse "multimedia" call center.

c. Claim 13 is further distinguishable over the cited references because none of the references discloses detecting a keyword use by the customer indicating the customer desires to deal with a supervisor.

In particular, appellant argues the citations of Elazar disclose detecting a desire to deal with a supervisor; however, the passage does not teach doing such detection to then engage the supervisor in response. Rather, Elazar teaches away from the claimed invention by teaching recording of the voice conversation (not text) for later analysis instead of engaging the supervisor.

Examiner respectfully disagrees. Appellant's argument against Eilbacher not mentioning determining a desire by the customer to deal with a supervisor or engaging a supervisor is improper, since Eilbacher was relied upon for the disclosure of the use of a keyword by a customer (col.11, lines 26-50), but not for the desire by the customer to deal with a supervisor. Next, Elazar's teachings of the determining step comprising identifying at least one word spoken, such as 'supervisor', which would indicate a request to speak with a supervisor (col.11, lines 1-6); wherein the determining step is to determine whether the call is to be monitored based on a predetermined condition (col.8, lines 56-58); along with the supervisor being provided with the data in real-time (see cols.6-7, lines 65-67 and 1-3; respectively), all indicates that such a detection of a keyword would engage a supervisor in response thereto. As a result, the examiner believes the above-argued feature is in fact taught by the combination of references relied upon.

d. Claim 3 is further distinguishable over the cited references because none of the references discloses the third party automatically engaged in response to automatic monitoring to review text messages before they are sent.

In particular, appellant argues Beck describes an auditor review but does not describe automatic monitoring, automatic engagement of the third party, in response to the automatic monitoring, or review of text messages before they are sent.

Examiner respectfully disagrees. To begin, the argument with reference to automatic monitoring and automatic engagement of the third party has been addressed in the responses above. Next, Beck teaches of a multimedia call center (col.4, lines 36-43), wherein the call center services multiple transactions such as video calls, DNT calls, and text-based documents, such as e-mails, are recorded and stored (col.12, lines 21-24). A system auditor or other worker may review a transaction to insure that nothing was missed or overlooked by various parties to the transaction (col.41, lines 36-41), wherein the other worker corresponds to the third party that reviews the e-mails before being sent (Examiner wants to note that the claim actually states that the third party is to review at least one of text messages and emails – thus Beck meeting the criteria of the e-mail). As a result, the examiner believes the above-argued feature is in fact taught by the combination of references relied upon.

e. Claim 8 is further distinguishable over the cited references because none of the references discloses the claimed measured change based upon a deviation from a preceding time period.

In particular, appellant argues Shaffer does not disclose the claimed feature of measured change based upon a deviation from a preceding time period.

Examiner respectfully disagrees. Shaffer discloses a detection of voice data patterns that are monitored for poor customer service (such as a length of silence between an agent and customer that exceeds a predetermined time interval which tends to indicate that the agent is not providing efficient information; a volume level above a predetermined level which tend to indicate a high level of frustration in the agent, customer, or both; etc.) (see col.4, lines 44-63), that when detected notifies/engages a supervisor into the session (see cols.7-8, lines 66-67 and 1-5; respectively), wherein the supervisor provides the agent with written messages or verbal comments. The different detected voice data patterns or volume levels correspond to the measuring of a change of stress level based on a deviated preceding time to indicate inefficiency, because the system notices an interaction between the agent and customer that is out of the normal and that was not previously like that. As a result, the examiner believes the above-argued feature is in fact taught by the combination of references relied upon.

f. Claim 12 is further distinguishable over the cited references because none of the references discloses the claimed use of video monitoring to assist in determining stress levels.

In particular, appellant argues the cited passages of Eilbacher merely describes a stress analyzer which analyzes key strokes, length of call, time on hold, as well as speech detection but there is no mention of using video to assist in analysis.

Examiner respectfully disagrees. To begin, Eilbacher teaches of a contact center for receiving and recording communications from customers, wherein such communications include telephone calls, faxes, e-mails, web interactions (such as "chat" sessions), voice over IP, and video (cols.5-6, lines 66-67 and 1-4)¹². Eilbacher also teaches of an analyzing unit for detecting stress by evaluating audio communications such as a telephone call. The stress analyzer detects high levels of stress and when the stress exceeds a predetermined level, an alert is triggered to a supervisor for remedial action (col.11, lines 12-25). Eilbacher also teaches that this stress analyzer can also identify other parameters of communication to determine whether it is satisfactory or unsatisfactory. Examples could be an e-mail communication, web communication, and other types of communications such as fax and voice over IP (col.11, lines 26-61). Thus, Eilbacher's contact center, which has the video monitoring and chat sessions, along with the stress analyzer to determine satisfactory or unsatisfactory stress levels, are believed to read upon the claim language as argued.

¹² Examiner Notes: More details can be found within Eilbacher at col.6, lines 15-57.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
CLD
August 25, 2010

Conferees:

Chelcie Daye /C. D./
Examiner, Art Unit 2161
Patent Examiner

/Apu M Mofiz/
Supervisory Patent Examiner, Art Unit 2161

/Charles Kim/
Supervisory Patent Examiner, TC 2100